

State of Colorado



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Governor

Richard Djokic
Director

DPA

Department of Personnel
& Administration

State Personnel Board

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Meeting Minutes
October 19, 2004

The State Personnel Board met in public session on Tuesday, October 19, 2004, at the Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80246.

The meeting was called to order at approximately 9:00 a.m. Board members Diedra Garcia and Linda Siderius were present in person. The following Board member was present via telephone: Elizabeth Salkind. Chair John Zakhem and Board member Troy Eid arrived at approximately 9:10 a.m.

Richard Djokic, Board Director, and Jane Sprague, General Professional III, were present. First Assistant Attorney General James Carr, Board Counsel, arrived at approximately 9:25 a.m.

I. REQUESTS FOR RESIDENCY WAIVERS

A. October 1, 2004 Report on Residency Waivers

Mr. Djokic reported that he granted one residency waiver request in the last month: a Bank Examiner (Financial/Credit Examiner II) (case number 2005R003).

II. PENDING MATTERS

There are no pending matters before the State Personnel Board this month.

III. REVIEW OF INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR ON APPEAL TO THE STATE PERSONNEL BOARD

- A. James Masse v. Department of Corrections, State Personnel Board case number 2003B077.

Following a brief discussion of the issues of recusal and entrapment and noting that strident language in the briefs confused the issues, Ms. Siderius moved to adopt the findings of fact and conclusions of law in the Amended Initial Decision of the Administrative Law Judge and to adopt the Amended Initial Decision. Ms. Garcia seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Eid, Ms. Garcia, Ms. Salkind, Ms. Siderius, and Mr. Zakhem.

- B. Jeanette E. Aragon v. Department of Corrections, San Carlos Correctional Facility, State Personnel Board case number 2003B223.

After a discussion of the requirements for an award of attorney fees, Ms. Siderius moved to adopt the Order Denying Motions for Attorney Fees and Costs, Vacating June 1, 2004 Hearing, and Dismissing Appeal of the Administrative Law Judge. Ms. Salkind seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Eid, Ms. Garcia, Ms. Salkind, Ms. Siderius, and Mr. Zakhem.

IV. REVIEW OF PRELIMINARY RECOMMENDATIONS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR TO GRANT OR DENY PETITIONS FOR HEARING

- A. Barbara Schwartz v. Department of Corrections, State Personnel Board case number 2004G048.

Director Djokic recused himself from participation in the discussion of this case. Ms. Sprague called the case number and the vote in lieu of the Director.

Ms. Garcia moved to adopt the Preliminary Recommendation of the Director and deny the petition for hearing. Ms. Siderius seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Eid, Ms. Garcia, Ms. Salkind, Ms. Siderius, and Mr. Zakhem.

- B. Melonie Y. Wilson v. Regents of the University of Colorado, University of Colorado at Colorado Springs and University of Colorado at Boulder, State Personnel Board case number 2003G074.

Ms. Garcia moved to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing. Mr. Eid seconded the motion. The motion passed on the affirmative vote of the

following Board members: Mr. Eid, Ms. Garcia, Ms. Salkind, and Mr. Zakhem. Ms. Siderius abstained from voting.

- C. Don Vadasy v. Department of Transportation, State Personnel Board case number 2004G072.

Ms. Siderius moved to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing. Ms. Garcia seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Eid, Ms. Garcia, Ms. Salkind, Ms. Siderius, and Mr. Zakhem.

- D. Richard Sickles v. Department of Public Health and Environment, Water Quality Control Division, State Personnel Board case number 2004G059.

Ms. Siderius moved to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing. Ms. Garcia seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Eid, Ms. Garcia, Ms. Salkind, Ms. Siderius, and Mr. Zakhem.

V. INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR

- A. Barbara Clementi v. Department of Corrections, State Personnel Board case number 2003B159.

Complainant, a community corrections parole officer, appealed the abolishment of her position, alleging (1) the layoff was discriminatory on the basis of national origin; (2) Respondent's offer of retention rights was in violation of Board rules governing retention rights and was retaliatory in violation of the Colorado Anti-Discrimination Act; and (3) Complainant was entitled to an award of attorney fees and costs. Prior to hearing, Complainant was reinstated to her position, and the ALJ dismissed her remaining substantive claims of discrimination, retaliation, and the challenge of retention rights on grounds of mootness. After hearing, the ALJ determined that Respondent's layoff of Complainant was contrary to rule and law in that Respondent violated the layoff statute by failing to consider seniority in total state service and performance evaluations in implementing the May 2003 reduction in force and in abolishing Complainant's position. The ALJ ordered that Respondent's action is rescinded, making Complainant's reinstatement to her position retroactive to July 1, 2003; that Respondent pay Complainant's attorney fees and costs; and that Respondent reimburse Complainant for travel costs incurred due to the illegal layoff.

[The deadline for appealing the Initial Decision of the Administrative Law Judge is October 18, 2004.]

VI. REVIEW OF THE MINUTES FROM THE SEPTEMBER 21, 2004 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

Ms. Siderius moved to approve the minutes of the September 21, 2004 meeting as submitted. Ms. Garcia seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Eid, Ms. Garcia, Ms. Salkind, Ms. Siderius, and Mr. Zakhem.

VII. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS SEPTEMBER 21, 2004 PUBLIC MEETING:

- A. Barbara Mickens v. Department of Corrections, Limon Correctional Facility, State Personnel Board case number 2003G076(C).

The Board voted that the Preliminary Recommendation of the Director be adopted, and that a hearing on Complainant's claims of age, race, and gender discrimination be denied; that a hearing on Complainant's claim of hostile work environment be denied; and that a hearing on Complainant's claim of retaliation, and arbitrary and capricious conduct by Respondent be granted.

VIII. REPORT OF THE STATE PERSONNEL DIRECTOR

There was no report of the State Personnel Director this month.

IX. ADMINISTRATIVE MATTERS & COMMENTS

A. ADMINISTRATIVE MATTERS

- Budget Reports and Revenue and Expense Report
- Cases on Appeal to the Board and to Appellate Courts
- Cases Scheduled for Preliminary Review
- Web Site Statistics
- Mandate/Order Affirmed in Koinis v. Department of Public Safety, State Personnel Board Case No. 2001B082, Court of Appeals No. 02CA1631

B. OTHER BOARD BUSINESS

- [Informational] Director's Report on joint Rules Revision Project.

In addition to the above items, Director Djokic reported that the Board is currently undergoing an audit, which is scheduled to occur every four

years, and that Jeff Wells, Personnel Director, has signed a lease for 621 17th Street, for office space to which the Board staff will move in June 2005.

Chair Zakhem stated that given the workload of the Administrative Law Judges (ALJs) and the understaffing of the Board for the past year, the Director has requested approval to hire a part-time ALJ. Having gone through the job description, Mr. Zakhem elicited input from the other Board members as to this proposal. Mr. Djokic added that he was looking for a .5 or .6 FTE, a 6-month contract ALJ, for most of the remainder of the fiscal year to assist in handling cases set for preliminary review and hearings, many of which have evolved as a result of the May 2003 layoffs by the Department of Corrections (DOC). The layoff cases with discrimination charges have been investigated by the Colorado Civil Rights Division and are now being returned all at once to the Board for handling. Mr. Djokic also noted that the new statute governing preliminary review mandates that a decision by the Board is due 90 days from the inception of the petition for hearing and that there is funding in the personal services line of the budget for such an ALJ position. The Board members approved of this request without objection.

Mr. Eid asked, in a related question, what DOC is doing to settle the above matters. Mr. Djokic remarked that these cases are difficult to settle, as they arose from the budget cuts to DOC and problems with retention rights, areas, and procedures. Mr. Eid asked that the Board request a briefing from DOC on its settlement efforts, approach, and posture, in addition to training and other issues resulting from layoff.

C. GENERAL COMMENTS FROM ATTORNEYS, EMPLOYEE ORGANIZATIONS, PERSONNEL ADMINISTRATORS, AND THE PUBLIC

X. EXECUTIVE SESSION

A. Case Status Report

The Board did not go into Executive Session and the meeting ended by consensus.

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APPROVED THIS 16th DAY OF NOVEMBER, 2004.

John Zakhem, Chair

Diedra Garcia, Vice-Chair

Troy Eid, Member

Elizabeth Salkind, Member

Linda Siderius, Member